

ESTTA Tracking number: **ESTTA351192**

Filing date: **06/04/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Sazerac Company, Inc.
Granted to Date of previous extension	06/30/2010
Address	803 Jefferson Highway New Orleans, LA 70152 UNITED STATES
Attorney information	Kathryn Robinson Cooley Godward Kronish LLP 777 6th Street, NW, Suite 1100 Washington, DC 20001 UNITED STATES krobinson@cooley.com , bryan.boyle@cooley.com, trademarks@cooley.com Phone:650-843-5000

Applicant Information

Application No	77825897	Publication date	03/02/2010
Opposition Filing Date	06/04/2010	Opposition Period Ends	06/30/2010
Applicants	<p>Bellville, Neil, II P. O. Box 522 Proctorville, OH 45669 UNITED STATES</p> <p>Marteeny, Karl, III 124 Private Drive 8700 Proctorville, OH 45669 UNITED STATES</p>		

Goods/Services Affected by Opposition

Class 033.

All goods and services in the class are opposed, namely: Alcoholic beverages containing fruit; Alcoholic cocktail mixes; Alcoholic energy drinks; Alcoholic fruit cocktail drinks; Alcoholic punch; Prepared alcoholic cocktail


Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition


U.S. Registration	2438707	Application Date	06/11/1996
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No.			
Registration Date	03/27/2001	Foreign Priority Date	NONE
Word Mark	RAIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 1995/09/00 First Use In Commerce: 1995/09/00 vodka		

U.S. Registration No.	2541274	Application Date	10/27/1999
Registration Date	02/19/2002	Foreign Priority Date	NONE
Word Mark	RAIN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2000/02/25 First Use In Commerce: 2000/02/28 vodka		

U.S. Registration No.	3306396	Application Date	03/17/2007
Registration Date	10/09/2007	Foreign Priority Date	NONE
Word Mark	RAIN		
Design Mark			
Description of Mark	The mark consists of RAIN in Stylized letters with three raindrops above the word RAIN, with one raindrop forming the dot in the letter "i".		
Goods/Services	Class 033. First use: First Use: 2006/09/00 First Use In Commerce: 2006/09/00 Vodka		

U.S. Registration No.	3442010	Application Date	06/15/2007
Registration Date	06/03/2008	Foreign Priority Date	NONE
Word Mark	RAIN ORGANICS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2008/02/00 First Use In Commerce: 2008/02/00 Vodka distilled from organic grains		

U.S. Registration No.	3568043	Application Date	09/28/2006
Registration Date	01/27/2009	Foreign Priority Date	NONE
Word Mark	RAIN RENEWS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2008/02/00 First Use In Commerce: 2008/02/00 Vodka		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	KENTUCKY RAIN DISTILLING CO.		
Goods/Services	Alcoholic beverages		

U.S. Application/Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
Word Mark	KENTUCKY RAIN DISTILLING COMPANY
Goods/Services	Alcoholic beverages

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	KENTUCKY RAIN COMPANY		
Goods/Services	Alcoholic beverages		

Attachments	75833572#TMSN.gif (1 page)(bytes) 77133674#TMSN.jpeg (1 page)(bytes) 77207062#TMSN.jpeg (1 page)(bytes) 77009717#TMSN.jpeg (1 page)(bytes) Not of Opposition.pdf (6 pages)(195563 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/KDR/
Name	Kathryn Robinson
Date	06/04/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 77/825,897
For the Trademark RAINDROP
Published in the Official Gazette on March 2, 2010

SAZERAC COMPANY, INC.)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
NEIL BELVILLE, II; KARL MARTEENY, III)	
)	
Applicants.)	
_____)	

NOTICE OF OPPOSITION

Opposer Sazerac Company, Inc. (“Sazerac”), a Louisiana corporation having its principal place of business at 803 Jefferson Highway, New Orleans, Louisiana 70152, will be damaged by the issuance of a registration for the mark RAINDROP (the “Applicant’s Mark”), as applied for in Application Serial No. 77/825,897 filed on September 14, 2009 by Applicants Neil Belville, II and Karl Marteeny, III (“Applicants”). Sazerac, having previously been granted an extension of time to oppose Applicants’ Mark, hereby opposes same.

As grounds for opposition, Sazerac alleges:

1. Sazerac is a company that markets and sells a number of different types and brands of alcoholic beverages and distilled spirits, including vodkas, whiskeys and wines. Sazerac has marketed and sold alcoholic beverages and distilled spirits in the United States for over a century.

2. Sazerac owns the following registrations in the United States for marks that incorporate the RAIN mark component, including:

RAIN (Reg. No. 2,438,707), issued March 27, 2001 for vodka;

RAIN (Stylized) (Reg. No. 2,541,274), issued February 19, 2002 for vodka;

RAIN (Stylized) (Reg. No. 3,306,396), issued October 9, 2007 for vodka;

RAIN ORGANICS (Reg. No. 3,442,010), issued June 3, 2008 for vodka distilled from organic grains, and

RAIN RENEWS (Reg. No. 3,568,043), issued January 27, 2009 for vodka.

3. Sazerac owns the following State registrations in connection with its distilled spirits business:

KENTUCKY RAIN DISTILLING CO. (Louisiana State Trade Name Registration), issued September 27, 1996 for alcoholic beverages;

KENTUCKY RAIN DISTILLING COMPANY (Louisiana State Trade Name Registration), issued September 27, 1996 for alcoholic beverages; and

KENTUCKY RAIN COMPANY (Louisiana State Trade Name Registration), issued September 27, 1996 for alcoholic beverages.

4. Sazerac has consistently and continually distilled, marketed, sold or otherwise distributed vodka under the RAIN mark since 1995. By virtue of its efforts and by virtue of the excellence of its products, the public has come to know, rely on, and recognize the RAIN marks as source identifiers for Sazerac's vodka products, and Sazerac has gained valuable reputation and a substantial amount of goodwill through the use and recognition of the RAIN marks.

5. In addition to the longstanding use and recognition of its RAIN marks, Sazerac's RAIN marks are inherently distinctive. The RAIN marks are suggestive of pure, clean,

refreshing water and thereby require imagination, thought, and perception to reach a conclusion as to the nature or characteristics of the applicable goods.

6. Upon information and belief, Sazerac alleges that on September 14, 2009 Applicants filed an Application to register the mark RAINDROP on an intent to use basis (Section 1(b)). Applicants seek registration in connection with “alcoholic beverages containing fruit; alcoholic cocktail mixes; alcoholic energy drinks; alcoholic fruit cocktail drinks; alcoholic punch; [and] prepared alcoholic cocktail.”

7. Applicants’ Mark is likely to be confused with and mistaken for Sazerac’s RAIN products because Applicants’ Mark is confusingly similar in sight, sound, and meaning to Sazerac’s RAIN marks. Because Applicants’ RAINDROP Mark contains the word “Rain,” the RAINDROP mark is both visually and phonetically similar to Sazerac’s RAIN mark. In addition, Sazerac’s Reg. Nos. 3,306,396 and 3,442,010 include a stylized version of the word “RAIN” using a raindrop motif, further creating a likelihood of confusion based on the visual similarity between Sazerac’s stylized RAIN marks and Applicants’ RAINDROP Mark. Finally, as rain is comprised of multiple raindrops, the commercial connotation created by both marks is highly similar, if not identical.

8. If Applicants’ Mark is allowed to register a likelihood of confusion will be created for consumers of alcoholic beverages. Applicants’ Mark is used in connection with products that are related to and directly overlap with Sazerac’s products. Applicant’s Mark has been designated in connection with Class 33 for “alcoholic beverages containing fruit; alcoholic cocktail mixes; alcoholic energy drinks; alcoholic fruit cocktail drinks; alcoholic punch; [and] prepared alcoholic cocktail.” Vodka is a popular mixer with fruit juices, energy drinks, and numerous combinations of other distilled spirits and liqueurs – making the applicable goods

under Applicants' Mark and Sazerac's RAIN marks clearly related. It is reasonable to assume that when a customer specifies Sazerac's RAIN brand of vodka when ordering a cocktail from a bartender or waiter, for example, asking for a "RAIN Martini," a likelihood of consumer confusion is created if Applicant offers a prepared alcoholic cocktail called the "RAINDROP" that does not contain RAIN brand vodka. The relevant customers of Applicants' alcoholic beverage products are identical to the customers and targeted customers of Sazerac's alcoholic beverages and distilled spirits products, including vodkas.

9. In addition to overlapping consumer bases, Applicants' intended channels of trade of Applicants' product overlaps with the channels of trade of Sazerac's alcoholic beverages and distilled spirits products, including vodka, namely, restaurants, bars, and brick-and-mortar as well as online retail stores.

10. If Applicants are permitted to register Applicants' Mark for the goods specified in the Application herein opposed, confusion resulting in damage and injury to Sazerac would likely occur. Persons familiar with Sazerac's marks would likely perceive Applicants' products as associated or affiliated with or sponsored by Sazerac, or would assume that the prepared cocktails contained Sazerac's RAIN vodka. Such confusion would inevitably result in damage to Sazerac.

11. Customers of Sazerac's products and the relevant public are likely to misapprehend Applicants' Mark as a Sazerac mark and/or believe in error that goods offered under the RAINDROP mark are offered by or in association with or under license from Sazerac.

12. Any defect, objection to or fault found with Applicants' goods marketed under the RAINDROP mark would necessarily reflect on and seriously injure the reputation that Sazerac has established for its alcoholic beverages and distilled spirits.

13. Registration of Applicants' Mark would give Applicants *prima facie* evidence of the validity and ownership of Applicants' Mark and of Applicants' exclusive right to use Applicant's Mark, all to the detriment of Sazerac.

14. Wherefore, Sazerac prays that this Opposition be sustained and that Application Serial No. 77/825,897 be denied and refused registration.

COOLEY GODWARD KRONISH LLP

Date: June 4, 2010

By: Kathryn Robinson
Kathryn Robinson Esq.
Todd S. Bontemps, Esq.
Attorneys for Applicant
Five Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306-2155
(650) 843-5000

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2010, I mailed the foregoing NOTICE OF OPPOSITION regarding Sazerac Company, Inc. v. Neil Belville, II and Karl Marteeny, III to Counsel for Applicants and Applicants by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

Robert R. Waters
Waters Law Group, PLLC
633 7th St.
Huntington, WV 25701-2109

AND

Neil Belville II
P.O. Box. 522
Proctorville, OH 45669

Karl Marteeny III
124 Private Drive 8700
Proctorville, OH 45669

Date:

6/4/10

A handwritten signature in cursive script, reading "Maria Weiland", written over a horizontal line.

Maria Weiland